Appendix

APPLICABLE PROVISIONS OF GENERAL CORPORATION LAW OF DELAWARE WITH REFERENCE TO CONSOLIDATION

(Sections 59, 60 and 61 of Chapter 65, Revised Code of 1935, as in effect in 1937.)

"Sec. 59. *Consolidation or Merger; Proceedings for:* Any two or more corporations organized under the provisions of this Chapter, or existing under the laws of this State, for the purpose of carrying on any kind of business, may consolidate or merge into a single corporation which may be any one of said constituent corporations or a new corporation to be formed by means of such consolidation or merger as shall be specified in the agreement hereinafter required; the directors, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, and stating such other facts required or permitted by the provisions of this Chapter to be set out in Certificates of Incorporation, as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case require, as well as the manner of converting the shares of each of the constituent corporations into shares of the consolidated corporation, with such other details and provisions as are deemed necessary.

"Said agreement shall be submitted to the stockholders of each constituent corporation, at a meeting thereof,

called separately for the purpose of taking the same into consideration; of the time, place and object of which meeting due notice shall be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each such corporation either has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known postoffice address of each stockholder of each such corporation, at least twenty days prior to the date of such meeting, and at said meeting said agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote; and if the votes of stockholders of each such corporation representing two-thirds of the total number of shares of its capital stock shall be for the adoption of the said agreement, then that fact shall be certified on said agreement by the Secretary of each such corporation, under the seal thereof; and the agreement so adopted and certified shall be signed by the President and Secretary of each of such corporations under the corporate seals thereof and acknowledged by the President of each of such corporations before any officer authorized by the laws of this State to take acknowledgments of deeds to be the respective act, deed and agreement of each of said corporations and the agreement so certified and acknowledged shall be filed in the office of the Secretary of State, and shall thence be taken and deemed to be the agreement and act of consolidation or merger of the said corporations; and a copy of said agreement and act of consolidation or merger, duly certified by the Secretary of State under the seal of his office, shall

also be recorded in the offices of the Recorders of the Counties of this State in which the respective corporations so consolidating or merging shall have their original Certificates of Incorporation recorded, or if any of the corporations shall have been specially created by a public Act of the Legislature, then said agreement shall be recorded in the county where such corporation shall have had its principal place of business, and such record, or a certified copy thereof, shall be evidence of the agreement and act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger.

"Any one or more corporations organized under the provisions of this Chapter, or existing under the laws of this State, may consolidate or merge with one or more other corporations organized under the laws of any other State or States of the United States of America, if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger. The constituent corporations may merge into a single corporation, which may be any one of said constituent corporations, or they may consolidate to form a new corporation, which may be a corporation of the State of incorporation of any one of said constituent corporations as shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares

of the corporation resulting from or surviving such consolidation or merger and such other details and provisions as shall be deemed necessary or proper. There shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the Laws of the State, which are stated in said agreement to be the laws that shall govern said resulting or surviving corporation and that can be stated in the case of a consolidation or merger. Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and, in the case of a Delaware corporation, in the manner provided in the two immediately preceding paragraphs. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the Secretary of State and said agreement shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this State. A copy of said agreement, duly certified by the Secretary of State under the seal of his office, shall also be recorded as provided in this Section with respect to the consolidation or merger of corporations of this State.

"If the corporation resulting or surviving such consolidation or merger is to be governed by the Laws of any State other than the laws of this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, including any amount fixed by appraisers pursuant to the provisions of Section 61 of

this Chapter, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in an action for the enforcement of payment of any such obligation or any amount fixed by appraisers as aforesaid and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Service of such process shall be made by personally delivering to and leaving with the Secretary of State duplicate copies of such process. The Secretary of State shall forthwith send by registered mail one of such copies to such resulting or surviving corporation at its address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated."

"Sec. 60. *Consolidation or Merger; Status of Old and New Corporations:* When an agreement shall have been signed, acknowledged, filed and recorded, as in the preceding Section is required, for all purposes of the laws of this State the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporation shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all

and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate whether vested by deed or otherwise, under the laws of this State, vested in any such constituent corporations, shall not revert or be in any way impaired by reason of this Chapter; provided, however, that all rights of creditors and all liens upon any property of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."

"Sec. 61. *Consolidation or Merger; Payment for Stock of Dissatisfied Stockholder:* If any stockholder in any corporation of this State consolidating or merging as aforesaid, who objected thereto in writing,* shall within twenty

*It is settled that the stockholder's written objection required by this provision for exercise of the appraisal right must be made before the vote for the plan at the stockholders' meeting. *Stephenson v. Commonwealth & Southern Corporation* (Del. Sup. Ct., 1933) 19 Del. Ch. 447; 168 Atl. 211.

days after the date on which the agreement of consolidation or merger has been filed and recorded, as aforesaid, demand in writing from the corporation resulting from or surviving such consolidation or merger, payment of his stock, such resulting or surviving corporation shall, within three months thereafter, pay to him the value of his stock at said date, exclusive of any element of value arising from the expectation or accomplishment of such consolidation or merger. If within thirty days after the date of such written demand the corporation and such stockholder fail to come to an agreement as to such value of such stock, such stockholder may demand an appraisal of his stock by three disinterested persons, one of whom shall be designated by the stockholder, one by the directors of the resulting or surviving corporation and the other by the two designated as aforesaid and may serve written notice on such corporation designating therein one appraiser and requiring the corporation to designate a second appraiser within thirty days from the date of service of such notice. If within thirty days from the date of service of such notice the corporation shall have failed to designate a second appraiser or if the two appraisers first designated shall fail to designate a third appraiser within thirty days from the designation of the second appraiser, such stockholder may apply to the Chancellor to designate a second and a third appraiser, or a third appraiser, as the case may be. The decision of the appraisers as to such value of such stock shall be final and binding upon the corporation and such stockholder. In case the value of such stock as so fixed by the appraisers is not paid to such stockholder within sixty days from the date of such deci-

sion and of notice thereof given to the corporation, the decision of the appraisers shall be evidence of the amount due from the corporation, and such amount may be collected as other debts are by law collectible from the resulting or surviving corporation. Upon receipt of payment in full of the value of such stock, such stockholder shall transfer his stock to the said resulting or surviving corporation, to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders."

APPLICABLE PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED

(48 Stat. 74, as amended; 15 U. S. C., Sec. 77a et seq.).

"Sec. 2. When used in this title, unless the context otherwise requires—

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"(3) The term 'sale', 'sell', 'offer to sell', or 'offer for sale' shall include every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value; except that such terms shall not include preliminary negotiations or agreements between an issuer and any underwriter. * * *"

"Sec. 5. (a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to buy such

security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

* * * * * * *"

"Sec. 12. Any person who—

(1) sells a security in violation of section 5, or

(2) * * *

shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security or for damages if he no longer owns the security."

"Sec. 19. (a) * * * No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason."